

**United States Postal Service and Dennis Bowie and  
North Jersey Area Local, American Postal  
Workers Union, AFL-CIO. Cases 22-CA-  
16504(P) and 22-CA-16638(P)**

September 21, 1992

**DECISION AND ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND OVIATT

On September 18, 1991, Administrative Law Judge James F. Morton issued the attached decision.<sup>1</sup> The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,<sup>2</sup> and conclusions<sup>3</sup> and to adopt the recommended Order as modified.<sup>4</sup>

<sup>1</sup> On October 10, 1991, the judge issued a document entitled "Errata."

<sup>2</sup> The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

<sup>3</sup> We find without merit the Respondent's argument that the judge erred in failing to give collateral estoppel effect to factfindings made by an administrative judge of the Equal Employment Opportunity Commission concerning the Respondent's discharge of Charging Party Bowie. See *Central Broadcast Co.*, 280 NLRB 501 fn. 1 (1986).

<sup>4</sup> We modify the recommended Order to correct its omission of customary language requiring the Respondent to reinstate the discriminatee to a substantially equivalent position if his former job no longer exists.

In Member Oviatt's view, there are numerous legitimate reasons why an employer might reasonably, and lawfully, limit a union's access to its facility. Here, however, the judge found that the Respondent had: (1) previously demonstrated animus towards the chief steward because of his union activities; (2) sharply curtailed the chief steward's access to its facility without warning or explanation; and (3) imposed this limitation immediately after the chief steward, in his capacity as union representative, appointed additional members to the recreation committee. Member Oviatt, therefore, agrees with his colleagues that the limitation on access violated the Act.

Further, in the normal course of events Member Oviatt would find unprotected the chief steward's actions on September 23, 1989, of shouting, cursing, waiving his briefcase, and throwing it on a desk when ordered by the Respondent to leave its premises. In this case, however, because of the Respondent's prior, unexplained, and unlawful limitation on the chief steward's access, the unlawful warning it issued him, and—as credited by the judge—the Respondent's arrogant treatment of the chief steward when ordering him to leave the premises or face arrest, Member Oviatt joins his colleagues in finding the consequent suspension and discharge unlawful.

**ORDER**

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, United States Postal Service, Paterson, New Jersey, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 2(a).

"(a) Offer Dennis Bowie immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the remedy section of the decision."

2. Substitute the attached notice for that of the administrative law judge.

**APPENDIX**

**NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government**

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT suspend or discharge you in order to discourage support for North Jersey Area Local, American Postal Workers Union, AFL-CIO, or any other union or to discourage the filing an unfair labor practice charge with the Board.

WE WILL NOT restrict you from access to our Paterson, New Jersey facility in order to discourage support for the Union.

WE WILL NOT issue a warning to you in order to discourage support for the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Dennis Bowie immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed and WE WILL make him whole for any loss of earnings and other benefits resulting from his discharge, less any net interim earnings, plus interest.

WE WILL notify Dennis Bowie that we have removed from our files any reference to his suspension and discharge and to the unlawful warning issued to

him and that the suspension, discharge, and warning will not be used against him in any way.

#### UNITED STATES POSTAL SERVICE

*Tracy Galligan, Esq.*, for the General Counsel.  
*Nancy B. Lavine, Esq.*, for the Respondent.

#### DECISION

##### STATEMENT OF THE CASE

JAMES F. MORTON, Administrative Law Judge. The complaint, which was issued in these consolidated cases and which was amended at the hearing, alleges that the United States Postal Service (the Respondent) has committed unfair labor practices within the meaning of Section 8(a)(1), (3), and (4) of the National Labor Relations Act (the Act). Specifically, the Respondent is alleged to have restricted Dennis Bowie, a chief steward, from entering its facilities outside his working hours, and to have issued a written warning to him, both in order to discourage him in the performance of his duties for North Jersey Area Local, American Postal Workers Union, AFL-CIO (the Union) at that facility. The Respondent is further alleged to have, in effect, later suspended him and then discharged him because of his union activities and also because he had filed an unfair labor practice charge with the Board.

Respondent, by its answer, denies the commission of any unfair labor practice and it asserts that the entire matter should have been deferred to the arbitral process. No merit is found respecting the latter assertion as the Board has held that allegations of an employer's violations of Section 8(a)(4) will not be deferred to arbitration. Nor will the 8(a)(3) allegation be deferred as it is closely intertwined with the alleged 8(a)(4) violation. See *International Harvester Co.*, 271 NLRB 647 (1984). Moreover, the arbitration award which found against Bowie expressly noted that it was confined to a determination as to whether Respondent had just cause under its contract with the Union to discharge Bowie and that it was not giving consideration to the assertion that Bowie was unlawfully denied access by Respondent to the Paterson facility, a consideration material to the General Counsel's claim that Bowie's suspension and discharge were discriminatorily motivated. Nor did the arbitration award give consideration to the evidence of union animus presented to me, a significant factor too in my weighing overall credibility.

I heard this case in Newark, New Jersey, on January 28, 1991. On the entire record, including my observation of the demeanor of the witnesses, and after consideration of the briefs filed by the General Counsel and the Respondent, I make the following

##### FINDINGS OF FACT

##### I. JURISDICTION—LABOR ORGANIZATION

The Board has jurisdiction as provided for in Section 1209 of the Postal Reorganization Act.

The Union is a labor organization as defined in Section 2(5) of the Act.

##### II. THE ALLEGED UNFAIR LABOR PRACTICES

##### A. Background

The Respondent has about 500 employees, represented by the Union and who work at the main post office in Paterson, New Jersey, and at four nearby facilities.

The alleged discriminatee, Dennis Bowie, began his employment with Respondent in 1977 at the Paterson facility. In late 1984, he became a steward for the Union. In April 1988, he was elected chief steward and held that post at the time of his discharge in late 1989.

The Paterson facility operates on a 24-hour-a-day basis. There are three shifts—called tours. Tour one, starts at 12:30 a.m. and ends at 8 a.m.; tour two runs from 8 a.m. to 4 p.m.; tour three from 3:30 p.m. to midnight.

Bowie worked on tour two. Of the 8 hours on that shift, he spent 6 on union business. In addition, he regularly spent 2 hours a day on his own time performing his duties as chief steward. In performing those duties on his own time, he made regular visits to the Paterson facility during tours one and three to process grievances and to use the Union's office, located there.

The record before me contains the following evidence of Bowie's activities as chief steward. In fiscal year 1989 he filed approximately 210 grievances and, in 1990, about 255 whereas Laurie Sparaga his immediate predecessor, had filed but 89 in 1987 and 44 in 1986.

In March 1989, he filed a class action grievance protesting the replacement of full-size lockers for each of the unit employees with new half-size lockers. Bowie testified that he was advised that the smaller lockers had been installed in order to provide more space for the supervisory staff.

Bowie testified in some detail that, in June 1989, one of Respondent's supervisors, Labor Relations Assistant Richard Anastasi, told him that he "was becoming a real hardhead with the grievances like Gary Weightman" and that Anastasi "would hate for [Bowie] to go through what [Weightman] went through." Weightman,<sup>1</sup> who had at one time been chief steward at the Paterson facility, had been discharged by Respondent and had later been reinstated by order of the Merit Systems Protection Board, according to Bowie.

Anastasi testified that he could not recall any particular discussion he had with Bowie and that Bowie was, in his opinion, a volatile personality.

I credit Bowie's detailed account of his conversation with Anastasi in June 1989.

On June 15, 1989 (all dates hereafter are for 1989 unless stated otherwise) Bowie attended a meeting of the social and recreation committee. As chief steward of the Union, he was a member of that committee. Also on it were Al Ulinsky, the Postmaster's designee; Phil De Mario, the supervisors' designee; and Tony Gonzales, the representative of the United Association of Letter Carriers. At that meeting, a vote was held as to whether the committee should buy a refrigerator for the Postmaster's office. Bowie argued against doing so, citing from a manual which set out policies to be followed by the committee. One of the manual's provisions barred expenditures which would benefit a single group or an individual. The members, other than Bowie, however voted in favor

<sup>1</sup> His name is spelled as it is in the General Counsel's brief. The transcript appears to contain a phonetic spelling.

of that expenditure; Bowie voted against it. Subsequently, Bowie checked other provisions of the manual and learned that each craft at the facility could have its own designee on the committee. As a result, he was able to add two members to the committee as craft representatives from the unit the Union represented.

On August 11, 1989, by memo to the Postmaster's designee, Bowie advised that two unit employees were also to be members of the committee and that they are to receive copies of all minutes of committee meetings. He also requested that a meeting of the committee members be scheduled as soon as possible.

#### B. *The Restriction of Access*

The complaint as amended alleges that Respondent, on August 11, unlawfully restricted Bowie's access to the Paterson facility. Bowie was summoned to Acting Manager Robert Andre's office and was given a copy of Andre's memorandum addressed to all tour superintendents, reading as follows:

Please advise your supervisory staff and 204B personnel that effective immediately, APWU Chief Steward Dennis Bowie is not to be permitted access to the building or workroom floor at any time other than his normal workhours (12:30–2100) unless you have written authorization from either the Director, City Operations or myself. This authorization will stipulate the following:

- (1) Purpose of visit
- (2) With whom he wishes to speak (Specific names)
- (3) Time duration of visit
- (4) Area access limitations

Unauthorized visits will not be condoned. If violated, have Mr. Bowie escorted from this facility.

Bowie had received no warnings from Respondent and was not told why his access during tours one and three was restricted. Acting Manager Andre did not testify to explain the basis for his action.

I find that the General Counsel has established a *facie* showing that Bowie was being restricted, as to his access to the facility, because of his activities as chief steward for the Union. In that connection, I note the extensive nature of those activities, the animus exhibited towards him by a supervisor on Respondent's labor relations staff because of his activities as chief steward, the absence of any warning, and the timing of his notification to the Postmaster's designee that he added two members to the recreation committee in relation to the restriction of his access that very same day.

As the General Counsel has made out a *prima facie* case, the burden shifted to Respondent to show that, nonetheless, it would leave restricted his access for nondiscriminatory reasons. *Wright Line*, 251 NLRB 1083 (1980).

Respondent's brief states that Bowie was restricted in his access to the facility "to forestall any recurrence" of an incident that took place in the early morning of August 11 involving Bowie and a tour one supervisor, Ray Sico. The difficulty Respondent faces with that assertion is that that incident, discussed further below, does not appear to be related to Andre's memorandum. Tour Supervisor Sico testified that

he turned in his handwritten report of that incident to a secretary on August 12, the day after Andre's memorandum. Further, Sico's memorandum was addressed to the postmaster, William B. Thomas, who testified at the hearing but not about Sico's report. Lastly, the memo restricting Bowie's access makes no reference to any incident involving Sico.<sup>2</sup>

I find that Respondent has failed to demonstrate that it would have, on August 11, restricted Bowie's access notwithstanding Bowie's protected activities. I thus further find that the restriction on Bowie's access was unlawfully motivated.

The incident involving Bowie and Sico was cited in a warning given Bowie by Respondent on August 30. The General Counsel contends that that warning was also unlawfully motivated. The evidence thereon is discussed, *infra*.

On August 12, Bowie filed a grievance to protest that "Tour One Supervisors have for a long time blatantly violated act 1.5 of the national agreement with the (acquiescence) of management" and stating that he himself witnessed supervisors "Mike Cypher, Ray Sico, Bob Bevans, Walt Eachs" doing bargaining unit work. In the grievance, Bowie also stated that when he protested to them, they "even get an attitude with [him]."

On August 30, he was given a document entitled Notice of Warning, dated August 21. It read:

This official disciplinary Letter of Warning is being issued to you for the following reasons:

#### CHARGE: "CONDUCT UNBECOMING A POSTAL EMPLOYEE"

(Disrespect to Management Official)

Specifically, on 8/11/89 at approximately 3:00 AM you entered this Facility and approached Supervisor Ray Sico requesting to speak to a clerk. When Supervisor Sico explained to you that he could not release her at this time to discuss a possible grievance, you became loud and obnoxious making derogatory statements. You kept referring to Supervisor Sico as "Boy." and stated "look Boy, I gave you a directive." In addition, during this hostile outburst you began waving your hands and a folder almost striking Supervisor Sico in the face. Your actions as demonstrated cannot and will not be tolerated.

It is hoped that this official letter of warning will serve to impress upon you the seriousness of your actions and that future discipline will not be necessary. If you are having difficulties which I may not be aware of or if you need additional assistance in instructions for improving your performance, please call on me, or

<sup>2</sup> The Bowie-Sico incident occurred in the early morning of August 11, hours before Bowie was given a copy of the notice whereby his access was restricted. The timing suggests a connection but, by itself, the timing raises only a suspicion. That suspicion is offset by other factors—Respondent never sought to get Bowie's version of the incident before restricting his access; the independent warning it issued him weeks later citing that incident; and the scope of the restriction which even required Bowie to get Respondent's permission to use the Union's office during tours one and three, thus suggesting that Respondent may have been more concerned with impeding him in filing grievances. In any event Respondent cannot rely on suspicion as it is no substitute for proof.

you may consult with your other supervisors, and we will assist you where possible. However, I must warn you that future deficiencies will result in more severe disciplinary action being taken against you. such action may include suspension, reduction in grade of pay, or removal from the Postal Service.

Bowie testified, relative to this notice of warning that, on August 11, he had asked Tour One Supervisor Sico to release an employee, on duty then, so that she could provide him with a statement he needed from her. Bowie related that Sico ignored him, that Sico was in fact then doing bargaining unit work, and that, when he (Bowie) repeated his request, Sico told him that he was not going to release the employee involved. Bowie testified that, at that point, he exclaimed, "Boy, I can't believe this is happening" and that his use of the word "boy" was an exclamation and not a derogatory reference to Sico.

Sico testified that, on August 11, Bowie kept calling him, "Boy," that Bowie stated that he was giving Sico "a direct order" and that he told Bowie that he could not "spare" the employee in question. Sico testified that he reported the incident of the tour one superintendent. The superintendent released the employee from her duties to go with Bowie to the Union's office in the building. As noted above, Sico filed a written report on August 12 with the Postmaster as to this incident. His report paralleled his testimony; in fact, he read it on the witness stand just before testifying as to the event itself. His report concluded with a statement by his that the Union, through arbitration, sanctions violence, and shields felonious assaults but that he does not.

I find it hard to accept Sico's account that Bowie engaged in egregious name-calling inasmuch as there is no evidence that the tour one superintendent made any reference to such conduct but instead he accommodated Bowie's request that the employee in question be released. In making that finding, I note also the parenthetical comment Sico volunteered at the conclusion of the report he filed on August 12, one which suggests that he was more than a little annoyed at Bowie's readiness to use the arbitral process in furtherance of his activities as steward. Further, it is unlikely that Bowie, a member of a racial minority himself, would openly denigrate Sico who is of Phillipino extraction. In addition, Sico's reading the report and then restating it did little to enhance the credibility of his account. I credit Bowie's version.

The credited evidence proffered as to this allegation of the complaint indicates that Bowie, on August 12, filed a grievance asserting, inter alia, that he observed Sico regularly doing unit work, that several weeks later he received a written warning which referred to an incident on August 11 as to which Bowie had never been asked to give his version, that the warning was premised on an exaggerated account by Sico which also alluded to Bowie's proclivity to process grievances vigorously. Based on these considerations, I find that the General Counsel has established an un rebutted prima facie showing that the warning dated August 21 and which was given Bowie on August 30 was discriminatorily motivated.

### *C. Bowie's Suspension and Discharge*

Bowie was placed on administrative leave on September 25; later was issued a notice of removal from Respondent's

employ; and on December 6 was discharged. The complaint alleges that Respondent took these actions because of Bowie's union activities and for having filed charges or given testimony under the Act. Respondent contends that they all pertained solely to assaults by Bowie upon members of its supervisory staff on September 23.

On September 1, Bowie filed the unfair labor practice charge in Case 22-CA-16504(R) against the Respondent. Bowie testified, essentially without contradiction, that, in mid-September, Respondent's labor relations assistant, Anastasi, told him that Respondent was not afraid of the Labor Board and that Bowie's filing charges would just make things harder for him.

On September 23, an incident involving Bowie occurred at the Paterson facility. The General Counsel contends that Respondent seized upon it as a pretext to suspend and then discharge Bowie. Respondent asserts that Bowie assaulted supervisors and that he was suspended and then discharged solely because of his misconduct then.

Bowie's account of the September 23 events is as follows. On September 22, he left a note at the office for the acting manager which stated that he would be at the facility during tour one in order to given the union steward on that tour a key to the Union's office, which had a new lock.<sup>3</sup> Upon arriving at the facility in the early morning of September 23, he asked for the tour one superintendent, Joseph Brennan. When he met Brennan on the work floor, Brennan informed him, in a "very arrogant and very nasty" manner that he had to leave. He asked Brennan if the acting manager had left a note which permitted Bowie to be on the premises. Brennan went to an office and, upon returning, told Bowie to leave and that, if he did not, the police would be called. Bowie got "a little upset" and threw his briefcase on the desk, saying that all he wanted to do was to drop off a key and that instead the police were being called. Brennan then moved close to him, bumped him and told him to leave. Brennan directed Tour Supervisor Michael Cypher to escort Bowie's "butt out" now. Bowie left with Cypher bumping him along as he was walking out. He told Cypher that he would get even by loading up tour one with grievances. At the parking lot he got into his car. Cypher was standing there looking "macho" and Bowie had to maneuver his car around Cypher who said, "[Y]ou're trying to hit me, pal." Bowie then drove to the Paterson police station where he filed assault charges against Brennan and Cypher. The police report was filed at 2:37 a.m. and recites that the alleged altercation took place at 1:57 a.m.

Soon after Bowie reported for work on the next workday, Monday, September 25, he was told to leave and was given a notice signed by the Postmaster which stated that he was being placed on administrative leave until further notice. As noted above Bowie was discharged on December 6. Respondent offered the following accounts to support its contention that these actions were not discriminatorily motivated.

Bowie's immediate supervisor on his tour, Robert Baker, testified that on September 25 he learned of the September

<sup>3</sup> Respondent's brief states that Bowie "claimed he had at least left a note" for the acting manager and then the brief states "it is an interesting question as to how the note came back into his possession to be presented as an exhibit at the hearing." The exhibit furnished me by the reporting service is a photostat. Respondent did not object to its admission into evidence or seek voir dire thereon.

23 incident and he then tried to find out what had happened. He talked to the supervisors and "all the people directly involved." Witness statements were provided him by apparently most of those individuals. He then decided to issue a request that Bowie be discharged which he signed on September 29. This request stated that Bowie was apparently intoxicated and that he assaulted Brennan and Cypher. In responding to a question as to whether his decision was based on any reason other than the September 23 incident, Bokor stated that there had been a pattern of incident where Bowie had become hostile, citing in general "instances with Mr. Anastasi" and Bowie's general behaviour. Bokor's answer in the negative when asked if his decision was based on anything involving Bowie's union activities. There is no explanation as to what constituted the "instances with Mr. Anastasi." Anastasi's testimony was simply that Bowie was in his opinion a volatile person; Anastasi, as noted earlier, did not materially controvert Bowie's testimony that Anastasi on two occasions had demonstrated animus towards Bowie for engaging in activities protected by the Act.

Various written statements by individuals as to the incident were received in evidence. Bokor acknowledged that he had not spoken to several of those individuals. He related he spoke to Brennan and Cypher but not to several others whose statements are not inconsistent with Bowie's account.

In any event, the matter was turned over to a postal inspector who obtained additional statements. On November 3, Bokor signed a notice of removal which was addressed to Bowie and which he had not composed but which was prepared by the labor relations section.

Respondent called six other witnesses who gave testimony as to the September 23 incident.

A tour one acting supervisor, Elliott Thompson testified as follows. On September 23, Bowie requested permission of him to talk with Tour Superintendent Brennan. Thompson tried to reach Brennan by phone. Bowie, using an expletive, walked by him. Bowie approached Brennan. Thompson followed and was about 8 to 20 feet away. He observed them arguing and Brennan told him, Thompson, to call the police. On cross-examination, Thompson stated he did not see Bowie throw his book bag at Brennan. In a statement he signed during the Postal Service investigation, Thompson stated that Bowie on September 23 "reeked of alcohol." He did not so mention this item during his testimony before me.

Luida Sacco, a clerk on tour one, was called as a witness by Respondent and she testified as follows. She saw Bowie come into the building that night when he was not supposed to be there and he had a "confrontation with Joe Brennan." They were arguing, Bowie was a lot louder and was standing nose to nose with Brennan. Bowie threw "a book bag like a leather portfolio twice in Joe's direction." She did not see it strike Brennan. She did see Bowie push up against Brennan "nose to nose" or "chest to chest" She did not see Bowie push Brennan or Cypher. She did see Bowie throw his bookbag on the desk.

Sally Clark, a clerk on duty during the early morning hours on September 23, testified for Respondent as follows. She heard Bowie "yelling and screaming and cursing" at Cypher.

The other three witnesses called by Respondent were Brennan, Cypher, and a tour one supervisor, Paul Grubb.

Brennan's account follows. Bowie said that he was there to give a key to the union steward. Brennan told Bowie to leave and that if he did not, he would "call the cops." Bowie then cursed him, threatened to "kick his ass," struck him on the shoulder with his bookbag and poked him in the chest. Bowie was under the influence of alcohol. Brennan then had Bowie escorted out of the building as he did not want to take the chance of someone getting hurt." In the pretrial statement Brennan signed, he stated that Bowie was "visibly drunk" and that he gave the Paterson police, when they arrived, the license plate number of Bowie's car as Bowie was driving under the influence of alcohol.

Supervisor Mike Cypher's testimony is as follows. Bowie was arguing with Brennan and shoved him. Brennan told Bowie to leave or that he would call the police. Bowie grabbed Brennan's arm and started to poke him in the chest. Brennan then told Elliott Thompson to call the police. Bowie grabbed Cypher's arm and said that he wanted Cypher to witness that Brennan would not allow him to see his steward. Cypher told him that he was not allowed in the building. Bowie then started poking Cypher in the chest and said he was going to sue his ass. He then started throwing his bookcase around. It hit Brennan, Bowie then threw it on the desk. He said he would not leave. After a couple of minutes, he began to leave. Cypher followed him. He told Cypher he was going to kick his ass. Paul Grubb followed. As Bowie left, he said he was going to tell Acting Manager Andre what happened. Bowie got into his car and stepped on the gas as he came straight out, almost hitting Cypher. He said he was coming to get Cypher but had trouble putting the car in reverse. He backed up in a way that forced Cypher to move aside. Bowie left, shouting expletives at Cypher.

Paul Grubb testified as follows. He heard Bowie arguing "quite loud" and that Brennan was "exercising his lungs a little bit" but was "not nearly as loud." Grubb went with Cypher to make sure that Bowie left. When Bowie was leaving, he drove close to Cypher so that Cypher had to jump aside and Bowie almost hit Cypher again when he had to backup. Bowie and Cypher then "exchanged words." Grubb did not see Bowie throw a bookbag at Brennan, or touch Cypher.

I have reservations as to Bowie's account that he was just a "little upset." I find it more likely in the circumstances that he did shout and curse and wave his briefcase about.

The accounts given by Brennan and Cypher are far more suspect. First, both indicated that Bowie was drunk that night. Brennan's account would ask me to believe that he had Bowie escorted out because he was anxious to see that no one would get hurt. If Bowie was drunk, I doubt he would have Bowie escorted to his car to drive off. If anything violates a stated concern for safety, Brennan's version does. More significantly, it strikes me as highly improbable that Bowie "reeked of alcohol" or was "visibly drunk" when his first stop after leaving the Paterson facility was at police headquarters to file a complaint against Brennan and Cypher. In weighing the accounts of Brennan and Cypher, I note that Bowie had directed a grievance expressly naming Cypher among others and tour one supervisors in general with continually violating the collective-bargaining agreement provisions pertaining to supervisors performing unit work. Brennan's and Cypher's accounts could lack objectivity based on that consideration. Much more of significance

is the fact that the other three of Respondent's witnesses did not corroborate the material aspects of the asserted grounds for Bowie's discharge—that he struck Brennan and assaulted Cypher.

I credit the accounts of Sacco, Clark, and Grubb to the extent that Bowie was very vocal, that he cursed, that he threw his briefcase down on a desk in anger, and that he exited the parking lot in an agitated state. In exiting, I find the evidence insufficient to establish that he tried to run Cypher down. I expressly find that the evidence does not support Respondent's contention that Bowie struck Brennan with his briefcase, that Bowie was intoxicated, that he poked either Brennan or Cypher or that he assaulted Cypher personally or in operating his car.

I am not unmindful that an EEOC administrative law judge accepted the uncontested accounts offered by Brennan and Cypher in finding that Bowie's discharge was not a racially motivated act. There, Bowie did not testify. Instead, the union endeavored, without success, to establish that Respondent treated white employees differently than it did Bowie. Incidentally, the judge recounted that Brennan testified that Bowie threw a bookbag at him. Brennan apparently did not then testify that Bowie hit him on the shoulder with his briefcase, as Brennan did so testify before me. As noted above, Bowie testified that he threw his briefcase down on the desk and that he did not strike Brennan. More significant is that, in the EEOC hearing, the judge did not have before him the evidence of Respondent's strong union animus towards Bowie or even Bowie's testimony. The evidence before me, when weighed in context with that animus and the other factors discussed above, is quite clear that Bowie did not assault Brennan, physically, orally or otherwise, and thus did not engage in the specific conduct cited by Respondent for suspending and discharging him.

I note also that the arbitrator, in making her award, stated that she considered only the appropriateness of Bowie's discharge based upon the events of September 23 and she made clear that Bowie's having been deprived of access or related matters were items she stated she did not consider in issuing her award.

The evidence before me establishes that on September 23 Bowie was engaged in union business, that he was endeavoring to enter Respondent's premises from which, as previously found, he was being unlawfully restricted from entering, and that he made known to Respondent that he was there on a simple union chore. Notwithstanding, he was threatened with arrest and escorted out. He was summarily suspended from employment by the postmaster without notice. All this occurred in the context of Respondent's earlier having made clear that it was greatly disturbed by his aggressive union advocacy and in the context of Respondent's labor relations assistant having told him that things would go harder for him for having availed himself of the Board's processes. I thus conclude that the General Counsel has made out a clear prima facie showing that Bowie was suspended and discharged because he was an aggressive chief steward and as retaliation for his having filed an unfair labor practice charge with the Board. Respondent has not demonstrated that it would have nonetheless still suspended and discharged him inasmuch as its own investigation in material parts negated the very basis it asserted as grounds for its actions. The record is devoid of any basis to support as finding that Re-

spondent lawfully discharged Bowie when he had in fact been engaged in union business and where, at most, he had been provoked by unlawful restrictions imposed on him by Respondent to use obscenities and lose his temper—neither of which Respondent has asserted as sufficient grounds, by themselves, to support the suspension it meted out to him or his discharge.

As the General Counsel's case-in-chief has not been rebutted, I find that Bowie's suspension and discharge were discriminatorily motivated by his union activities and by his recourse to the Board's processes.

#### CONCLUSIONS OF LAW

1. The Board has jurisdiction over the Respondent by reason of the provisions of the Postal Reorganization Act.

2. The Union is a labor organization as defined in Section 2(5) of the Act.

3. The Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act by having:

(a) Restricted Dennis Bowie from access to its Paterson facility during tours one and three because of his activities as chief steward of the Union.

(b) Issued a written warning to him dated August 21 in order to discourage him from performing his duties as the Union's chief steward.

(c) Suspended and discharged him in order to prevent him from continuing to perform his duties as chief steward for the Union and to discourage its employees from supporting the Union.

4. Respondent has engaged in unfair labor practices as defined in Section 8(a)(1) and (4) of the Act by having suspended and discharged Dennis Bowie because he filed an unfair labor practice charge with the Board.

#### THE REMEDY

Having found that the Respondent has engaged in unfair labor practices, I recommend that the Respondent be ordered to cease and desist therefrom and to take the affirmative action described below, which is designed to effectuate the policies of the Act.

With respect to the necessary affirmative action, I recommend that the Respondent be ordered to reinstate Dennis Bowie to his former job or to a substantially equivalent position, if it no longer exists, without prejudice to his seniority or other rights and privileges previously enjoyed, and make him whole for any loss of earnings he may have suffered because of the discrimination practiced against him by payment to him of a sum of money equal to that which he normally would have earned from the date of the discrimination to the date of reinstatement, in accordance with the method set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1978), and that the Respondent remove from its files any reference to his discharge and notify him in writing that this has been done and that evidence of his unlawful discharge will not be used as a basis for future personnel action against him.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>4</sup>

#### ORDER

The Respondent, United States Postal Service, Paterson, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Restraining employees from access to its Paterson, New Jersey facility in order to discourage them from engaging in activities in support of the North Jersey Area Local, American Postal Workers Union, AFL-CIO (the Union).

(b) Issuing warnings to employees to discourage them from such activities.

(c) Suspending or discharging employees because they support the Union or have filed unfair labor practices charges under the Act.

(d) In any like or related manner interfering with, restraining or coercing employees with respect to the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Dennis Bowie immediate and full reinstatement to his job and make him whole for the losses he incurred as a result of the discrimination against him, in the manner specified in the remedy section of this decision.

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<sup>4</sup>If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(b) Remove from its files any reference to Dennis Bowie's suspension and discharge and to the August 21 warning, and notify him in writing that this has been done and that evidence of these unlawful acts will not be used as a basis for future personnel actions against him.

(c) Post at its Paterson, New Jersey facility copies of the attached notice marked "Appendix."<sup>5</sup> Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

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<sup>5</sup>If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."